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Minutes of the Commission Meeting Held on October 1, 2009 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: (P = Present; A = Appointed; E = Elected)

P James Athearn (A – Edgartown)	P Ned Orleans (A – Tisbury)
P Bill Bennett (A- Chilmark)	P Jim Powell (A – West Tisbury)
P John Breckenridge (E – Oak Bluffs)	P Camille Rose (A - Aquinnah)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
P Peter Cabana (E – Tisbury)	- Casey Sharpe (A – Oak Bluffs)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
P Carlene Gatting (A - County)	P Holly Stephenson (E – Tisbury)
- Chris Murphy (E – Chilmark)	P Andrew Woodruff (E – West Tisbury)
- Katherine Newman (E –Aquinnah)	

Staff: Mark London (Executive Director), Paul Foley (DRI Analyst/Planner), Jo-Ann Taylor (Coastal Planner/DCPC Coordinator), Bill Veno (Senior Planner), Bill Wilcox (Water Resource Planner)

The meeting was called to order at 7:35 p.m.

1. VINEYARD HOUSE: DRI NO. 582– REQUEST FOR EXTENSION

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, N. Orleans, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

For the applicant: John Early, Member, Board of Directors; Brian Mackey, Director of Development

John Early explained that they are requesting a second two-year extension on their approved project for a central facility in Vineyard Haven.

- They have a plan but don't have the necessary funding to proceed.
- They have a revised plan for a modular building plan which will be more economical. The site plan will not change, but the configuration of the buildings will be slightly different.
- They are asking for an extension of the original plan and will come back with a request for modification at the appropriate time.
- They will be proposing fewer bedrooms.

Bill Wilcox clarified that there hasn't been a change in nitrogen loading levels for the Tashmoo Watershed.

Carlene Gating moved, and it was duly seconded, to approve the Vineyard House request for extension for two years. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

2. FLAT POINT FARM ESTATE PLAN: DRI-34-M2 – PUBLIC HEARING

Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gating, N. Orleans, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

For the applicant: Glenn Provost, agent

Linda Sibley opened the public hearing and read the hearing notice. The proposal is a preliminary estate plan that would subdivide a 91.6-acre farm into 2 large conservation parcels, 5 four-acre lots, and 3 one-acre youth lots.

Jim Athearn recused himself.

2.1 Staff Report

Paul Foley gave the staff report.

- In 1976, Arnie Fischer, Sr. subdivided four 5-acre lots out of the 130-acre farm.
- In 2007 they created a 12.9-acre Form A lot around an existing camp building.
- This preliminary estate plan proposes two large conservation parcels, five 4-acre lots around existing buildings, and three 1-acre homesite lots.
- Zoning is RU residential with 3-acre minimal lot size.
- A large portion of the property is in the shore zone, in which generally only small additions are allowed.
- The Planning Board suggested the subdivision is benign use.
- Required permits are Form A Subdivision.
- It does trigger a mandatory review because of subdivision of farm land.
- A goal of the preliminary plan is to see what is permitted.
- It's a dirt road. They have a prescriptive right to use the road. A question is whether they have the right to increase use under a prescriptive right.
- The site is in a nitrogen-sensitive watershed and within a natural heritage review area.
- 4/5 is hayfields, 1/5 is woods.
- Staff did a traffic report.
 - The road at Great Neck is private. The applicants have a prescriptive easement based on the historic use of the road.
 - The plans call for a 30-foot easement along the existing roadway on their property.
 - Existing residential traffic generation is 85. Existing potential trips is 110. Proposed residential trip generation is 150 trips per day. Farm trips are seasonal, and could average 30 per day. Traffic increase is estimated to go from 140 trips to 180 trips, about a 23% increase.
 - Traffic recorders at the Mill Pond show 7700 vehicles average daily in July. Impact on the main road would be minimal but impact on the Road to Great Neck would be moderate.
 - Site lines are adequate.

- The project would have minimal impact on town services
- Regarding affordable housing, staff concluded that the four lots from 1976 should not be included because there wasn't an affordable housing policy then. The 2007 lot is counted but, the two conservation parcels are not counted. The total is nine buildable lots which doesn't trigger the affordable housing policy. The three homesite lots could be counted as an affordable housing contribution.
- Land Bank has trails that have views of the farm. A trail head goes along the side of the property.
- Town of West Tisbury Planning Board sent a letter stating that the project is relatively benign development that embodies the open space development goals.
- The Commission received one letter that expressed concern about the impact of the proposal and questioned the right of the applicant to increase use of the Road to Great Neck.
- An abutter wants to make sure the road that goes over their property doesn't change.

Mike Mauro reported that there were zero crashes at the two intersections during the last few years. Turnouts are more than adequate.

2.2 Wastewater

Bill Wilcox explained the wastewater.

- The water policy is silent on how to review agricultural operations.
- The Tisbury watershed is classified as a compromised watershed. It is allocated 0.8 kgs per acre, about 73 kgs of nitrogen per year for the site.
- He suggested that the current agronomic fertilization rates be used as a baseline and that amount be grandfathered in as an approved upper limit.
- An acceptable load for an acre of farmland would be 40 pounds of nitrogen applied to the crop. We would evaluate what the existing practices are. Then we would calculate what the existing practices are and compare with the recommended agronomic rate. If it exceeds the agronomic rate, something would have to be done to reduce the nitrogen.
- For Flat Point Farm, the acceptable amount of fertilizer to be applied annually would be 232.0 kg. If you add that to the existing four residences, the total load is 266.8 kgs per year. In actual practice, about $\frac{3}{4}$ of the hay field is fertilized and the legume is fertilized about every six years.
- The animals contribute about 800 kgs to the surface, but only about 40 kgs would potentially reach the groundwater.
- In summary, the actual practice is 124 kgs of nitrogen. The total of farming and residential is 160.8 kgs which is well below what the acceptable load would be. 197.6 is potential total which is still well below. The proposal as it stands meets the nitrogen loading policy and leaves some wiggle room for additional application.
- One issue that they didn't go into is that the policy utilizes an annual average water use of about 64,000 gallons per year. In looking at the water meter records for multi-house lots, water use rates with house and guest houses is 20 to 40 percent more. If guest houses were constructed, nitrogen could increase. Commissioners could recommend nitrogen mitigation if guest houses were to be built, or limit the number of guest houses.

Mark London said the projected use appears to meet the policy, provided the applicants lock in their current practices to some extent.

Linda Sibley noted that in West Tisbury, 4.5 acres are required for a guest house.

Doug Sederholm said, setting aside the facts of this application, in the many meetings to establish the water quality policy, they never addressed agricultural use. He can't accept a proposed methodology that hasn't been discussed that would call for a 400% higher nitrogen level than what is acceptable under MVC policy on a compromised watershed. That said, he's delighted that the farm is at half of the load.

Bill Wilcox said that agricultural contribution to Tisbury Great Pond is about 10%; allowing and existing operation won't alter the water quality. The nitrogen loading for the four unbuilt houses includes average allocations for lawn and landscape nitrogen.

Applicant's Presentation

Glenn Provost thanked staff for the staff report and presented addition information.

- This is not a final plan that can be recorded. A final plan would have to come back to the Commission.
- The lots created around existing buildings are sized so they can't have guest houses.
- The reason the 30 foot layout was created is to create a separate easement in case additional turnouts need to be created or changes need to be made.
- The only parcels that don't contain existing structures are the three homesite lots. The farm lot doesn't have a dwelling.
- Regarding the neighbor with road concerns, the applicant could bring the road around the neighbor's lot if necessary.
- What they're hoping to accomplish through the process is to get clarity on what conditions should go on the next plan.
- For additions, they would need a special permit.
- The way the lots are configured now, an owner could build further back on the lots and not have to go through the ZBA.
- The conservation parcels would be prohibited from being subdivided into any buildable lots. They haven't picked the mechanism by which that would happen.
- The question of nitrogen would be about farm practices and fields. We have existing septic systems now. The density of the project is extremely low. The family is trying to keep the farm a farm and creating lots that, if necessary in the future, could be spun out.
- They have discussed moving lines back to gain two more acres of farmland and increasing the three acre lot to four. The family wants to incorporate constructive suggestions and ideas into the plan.

Public Comment

Samantha Look, neighbor, explained that she has a meadow between her house and the road.

- They wanted to state their concern about changes on the road. It's difficult to look at the plan and not believe that it won't have significant impact.

- The applicants have a prescriptive use, not a specific easement.
- She understands that zoning gives the applicants the right to create the lots but the potential impact of traffic could have significant impact on the character of the road. The prescriptive use was for access for a farm and a family; it seems like the proposal is opening the door to a much greater use.
- There are multiple options for access through multiple neighbors.
- She asked about the process and difficulty of getting a special permit for the existing lots.
- She is under the impression that new lots are supposed to have 100-foot frontage along the boundary.
- Regarding the conservation land, she asked whether the public would have any benefit.

Glenn Provost explained that the lots that around the existing structures are permitted by right irrespective of frontage, etc. The three lots at the top would be subject to the current rules and if this were to be filed as the plan, it would be filed as a form A plan. They feel they can put lots around the existing buildings as a form A and that the three lots at the top have legal access on a pre-existing road.

Doug Sederholm observed that the prescriptive easement issue is a private property issue. The Commission would look at impact, but the question of whether the applicants have the right to expand the use is a private property matter and not an issue for the Commission.

Christina Brown reiterated that any decision regarding the subdivision doesn't give the applicant any further rights to use the road.

Christian Strom commented that this property was 130 acres not too long ago. There have been many subdivisions of this property. He asked whether the Commission is making a total regional decision.

Linda Sibley said the subdivision question is under the Commission's purview and subdivisions have to conform to zoning.

Christian Strom and **Samantha Look** requested party status.

Glenn Provost said that they are going back to the planning board. There will be another hearing. This plan is not recordable or usable. The purpose of going through this process is to discover the regional concerns that need to be dealt with.

John Breckenridge asked if there are any changes they'd like to make now. **Glenn Provost** said they would rather submit the plan as is.

Arnie Fischer noted that subdividing the farm is really hard for him and the family.

- As far as he's concerned, it's all affordable housing so far except the 12-acre lot.
- Nothing has been sold out of the family since 1939. Four lots were created for the family.
- The lots really are affordable housing.
- He knows the Commission is looking at this as potential development. The family doesn't want to do anything. But as a trust, they have to do something.

Jim Athearn, commenting as a citizen, wondered if the record will be left open for written comments.

Christian Strom said that they're sympathetic to people trying to resolve family farm issues. However, there are other roads into the property that could be explored.

Arnie Fischer clarified nitrogen use.

- They don't grow sweet corn.
- The 40 acres of Flat Point uses no nitrogen except for animal waste.
- The legume hayfield should be reseeded every 4 to 8 years, but it's usually every 15 years. They use 40 pounds of nitrogen per acre for a 7 acre field.
- They worked with the soil conservation service for animal waste run-off. Now they have fencing and vegetation so run-off issues have been addressed.
- For the hayfield they use 50 lbs of nitrogen per acre but it's sporadic.
- In an ideal world, they would increase calcium and grow legumes which create their own nitrogen.
- They don't have plans to change the farm operations.
- Agricultural nitrogen is supposed to go into the root zone and not into water run off.

Linda Sibley kept the public hearing open solely for the purpose of receiving written testimony. Written comments should be received by noon on October 22nd.

3. ISLAND WIND DISTRICT OF CRITICAL PLANNING CONCERN

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Jo-Ann Taylor explained that the Commission received two nominations for Districts of Critical Planning Concern related to wind turbines, one for the land and one for ocean waters of Dukes County. The Commission gave the towns a couple of weeks to consider the effects a moratorium would have.

- The Commission received two more nominations and more letters, most supporting designation of land and waters, with the exception of Edgartown which supports accepting a DCPC for waters, not land.
- The Commission also received correspondence from Superintendent of Schools regarding a turbine at the West Tisbury School.
- Joe Alosso, Edgartown Wastewater Manager, sent a letter regarding a proposed 365 foot turbine at the wastewater treatment plant.
- The Commission has 45 days to take its vote. As soon as the nomination is accepted, the moratorium begins as does the 60-day window to hold a public hearing, take a designation vote and develop guidelines.
- Reasons for nomination have been presented.

Holly Stephenson read a statement in support of a DCPC for sustainable energy encompassing waters and lands.

- The Oceans Plan is not all-encompassing and doesn't deal with the environment as a whole.
- Funds from wind turbines could support energy and conservation initiatives.

- This new DCPC could be a showcase for Massachusetts. The DCPC could be the first step in implementing the energy goals of the Island Plan with a strong emphasis on energy use and sustainability.
- If Martha's Vineyard is to bear the brunt of commercial wind, it should also be a showcase case of energy sustainability planning.
- The DCPC should be compatible with the Ocean Plan goals but focus on energy sustainability using the guidelines developed in the Island Plan

Bill Bennett suggested that the Commission divide the nomination into one for land and one for water and defer discussion of the land DCPC until November 5th. There is a lot of information that needs to be integrated.

Bill Bennett moved, and it was duly seconded, to nominate for consideration as a DCPC that portion of the airspace over all ocean waters within the county of Dukes County which exceed 220 feet above mean sea level and to defer discussion of the land zone of the DCPC until November 5th.

- **Linda Sibley** asked if the Commission can regulate the waters off of the Elizabeth Islands.
- **Carlene Gating** said it makes perfect sense to divide land and waters into two phases. The water requires some sort of immediacy.
- **Peter Cabana** pointed out that the State has regulated land-based wind for a maximum of 2 megawatts. The rules are more complex. He believes that the Commission should be dealing with water and land simultaneously because they have been regulated.
- **Linda Sibley** said that the Island has unanimity about the question of the waters. One town is not comfortable with the DCPC on the land. It's also much more difficult to write the boundaries for the land. There's nothing imminent about the circumstances for the land and the Commission wants to take quick action on the waters. The Commission will have to act on both of them.
- **Holly Stephenson** reiterated that there needs to be a discussion of the third stage of sustainability.
- **Jim Athearn** suggested that the third stage discussion could take place in the context of land-based wind power regulations.
- **Doug Sederholm** said, as was done with the Aquinnah DCPC proposal, the Commission could use final regulations as a framework as the third prong of the proposal and then amend the boundary. What the Commission doesn't want is a definition of boundaries on land that would create a moratorium for everything.
- **John Breckenridge** said that it's keenly important to keep the sustainability component in the Commission's sights.
- **Christina Brown** said there has to be a vote on the land-based DCPC by November 5th.
- **Camille Rose** said she doesn't see the wisdom of separating the two DCPCs and doesn't see the point of waiting.
- **Linda Sibley** said that the public hearing and discussion of the two DCPCs would take place at the same time. Waiting would allow the Commission to get the language right for exempting existing projects.

- **John Breckenridge** said he doesn't have the knowledge or same sense of urgency related to land. He doesn't believe that the Commission is sacrificing the land. Waiting will allow the Commission to tackle issues of siting and boundaries.
- **Mark London** explained the status of legislation.
- The Oceans Act has been adopted. Under the Oceans Act, the Energy Facilities Siting Board would have the ability to override town zoning and decision making for a wind farm of over 100 megawatts.
- The State is talking about the possibility of adopting an act overriding town zoning for wind turbines of 2 megawatts or more on land. Wording is far from being finalized and legislated.
- **Jo-Ann Taylor** explained that on November 5th, the Commission can proceed with the public hearing on the water-based portion. On the same night the Commission can vote on the consideration of the land-based DCPC.

A roll call vote was taken on the motion to nominate for consideration as a DCPC that portion of the airspace over all ocean waters within the County of Dukes County which exceed 220 feet above mean sea level and to defer discussion of the land DCPC until November 5th. . In favor: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, C. Gatting, J. Powell, N. Orleans, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff. Opposed: P. Cabana. Abstentions: None. The motion passed.

The public hearing will be held on November 5th at 7:00 p.m. at the High School Cafeteria.

Chris Fried said he hopes the DCPC will be used as an educational cooperative tool, versus a means of blocking wind power.

Mark London reminded Commissioners that a DCPC is a means to allow towns to adopt adequate zoning regulations.

4. OCEAN PLAN COMMENTS TO THE SECRETARY OF ENERGY & ENVIRONMENTAL AFFAIRS

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A Woodruff

Doug Sederholm moved, and it was duly seconded, to adopt comments as drafted, subject to proofreading and editing.

- **Holly Stephenson** commented that staff did a really good job.
- **Andrew Woodruff** commented that the document is very thorough and complete, and very logical and reasonable.
- **Jim Powell** commented that the language in the comments protects and preserves the benefits the Vineyard deserves as it protects its land and waters. He suggested that the plan on page five to coordinate between Massachusetts, Rhode Island and Federal government could be strengthened.
- **Camille Rose** reminded that Commission that there are other aspects to the Ocean Plan that should be commented on.

- **Mark London** said there will be additional comment on birds.

A voice vote was taken on the proposal to send comments that are substantially as presented in the draft, with Christina Brown and Mark London authorized to finalize the comments. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

5. TRANSPORTATION IMPROVEMENT PLAN - AMENDMENTS

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Doug Sederholm moved, and it was duly seconded, to endorse the FFY2011 Martha's Vineyard Transportation Improvement Plan. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

The meeting adjourned at 9:55 p.m.

Chairman

Date

Clerk-Treasurer

Date